



# Senate

## File No. 696

General Assembly

February Session, 2000

**(Reprint of File No. 484)**

Substitute Senate Bill No. 528  
As Amended by House  
Amendment Schedule "A"

Approved by the Legislative Commissioner  
April 29, 2000

### ***An Act Concerning The Regulation Of Certain Cigarette Manufacturers.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) As used in this act:

2 (1) "Adjusted for inflation" means increased in accordance with the  
3 formula for inflation adjustment set forth in Exhibit C to the Master  
4 Settlement Agreement;

5 (2) "Affiliate" means a person who directly or indirectly owns or  
6 controls, is owned or controlled by, or is under common ownership or  
7 control with, another person. The terms "owns", "is owned" and  
8 "ownership" mean ownership of an equity interest, or the equivalent  
9 thereof, of ten per cent or more. The term "person" means an  
10 individual, partnership, committee, association, corporation or any  
11 other organization or group of persons;

12 (3) "Allocable share" means allocable share as that term is defined in  
13 the Master Settlement Agreement;

14       (4) "Cigarette" means any product that contains nicotine, is intended  
15       to be burned or heated under ordinary conditions of use, and consists  
16       of or contains (A) any roll of tobacco wrapped in paper or in any  
17       substance not containing tobacco; or (B) tobacco, in any form, that is  
18       functional in the product, which, because of its appearance, the type of  
19       tobacco used in the filler, or its packaging and labeling, is likely to be  
20       offered to, or purchased by, consumers as a cigarette; and (C) any roll  
21       of tobacco wrapped in any substance containing tobacco which,  
22       because of its appearance, the type of tobacco used in the filler, or its  
23       packaging and labeling, is likely to be offered to, or purchased by,  
24       consumers as a cigarette described in subparagraph (A) of this  
25       subdivision. The term "cigarette" includes roll-your-own tobacco,  
26       meaning any tobacco which, because of its appearance, type,  
27       packaging or labeling is suitable for use and likely to be offered to, or  
28       purchased by, consumers as tobacco for making cigarettes. For  
29       purposes of this definition of "cigarette", 0.09 ounces of roll-your-own  
30       tobacco shall constitute one individual "cigarette";

31       (5) "Master Settlement Agreement" means the settlement agreement  
32       executed November 23, 1998, by the state of Connecticut and leading  
33       tobacco product manufacturers, entitled "State of Connecticut v. Philip  
34       Morris, et al.";

35       (6) "Qualified Escrow Fund" means an escrow arrangement with a  
36       federally or state-chartered financial institution having no affiliation  
37       with any tobacco product manufacturer and having assets of at least  
38       one billion dollars where such arrangement requires that such financial  
39       institution hold the escrowed funds' principal for the benefit of  
40       releasing parties and prohibits the tobacco product manufacturer  
41       placing the funds into escrow from using, accessing or directing the  
42       use of the funds' principal except as consistent with the provisions of  
43       subsection (b) of section 2 of this act;

44       (7) "Released claims" means released claims as that term is defined  
45       in the Master Settlement Agreement;

46 (8) "Releasing parties" means releasing parties as that term is  
47 defined in the Master Settlement Agreement;

48 (9) "Tobacco product manufacturer" means an entity, or its  
49 successor, that, after the effective date of this act, directly and not  
50 exclusively through an affiliate (A) manufactures cigarettes anywhere  
51 which the manufacturer intends to be sold in the United States,  
52 including cigarettes intended to be sold in the United States through  
53 an importer, provided an entity that manufactures cigarettes that it  
54 intends to be sold in the United States shall not be considered to be a  
55 tobacco product manufacturer under this subparagraph (A) if (i) such  
56 cigarettes are sold in the United States exclusively through an importer  
57 that is an original participating manufacturer, as that term is defined in  
58 the Master Settlement Agreement, that will be responsible for  
59 payments under the Master Settlement Agreement with respect to such  
60 cigarettes as a result of the provisions of subsection II (mm) of the  
61 Master Settlement Agreement and that pays the taxes specified in  
62 subsection II (z) of the Master Settlement Agreement, and (ii) the  
63 manufacturer of such cigarettes does not market or advertise such  
64 cigarettes in the United States; or (B) is the first purchaser anywhere  
65 for resale in the United States of cigarettes manufactured anywhere  
66 that the manufacturer does not intend to be sold in the United States.  
67 A tobacco product manufacturer shall not include an affiliate of a  
68 tobacco product manufacturer unless such affiliate itself meets the  
69 criteria specified in subparagraph (A) or (B) of this subdivision;

70 (10) "Units sold" means the number of individual cigarettes sold in  
71 this state by the applicable tobacco product manufacturer, whether  
72 directly or through a distributor, dealer or similar intermediary or  
73 intermediaries during the year in question, as measured by excise taxes  
74 collected by this state on packs, or on "roll-your-own" tobacco  
75 containers, bearing the excise tax stamp of the state. The Department of  
76 Revenue Services shall adopt such regulations, in accordance with the  
77 provisions of chapter 54 of the general statutes, as are necessary to  
78 ascertain the amount of state excise tax paid on the cigarettes of such  
79 tobacco product manufacturer for each year.

80       Sec. 2. (NEW) (a) Any tobacco product manufacturer selling  
81       cigarettes to consumers within this state, whether directly or through a  
82       distributor, dealer or similar intermediary or intermediaries, after the  
83       effective date of this act shall (1) become a participating manufacturer,  
84       as the term is defined in section II (jj) of the Master Settlement  
85       Agreement, and generally perform its financial obligations under the  
86       Master Settlement Agreement; or (2) place into a Qualified Escrow  
87       Fund not later than April fifteenth of each year in question the  
88       following amounts, as adjusted for inflation: For calendar year 2000,  
89       \$.0104712 per unit sold after the effective date of this act; for each of  
90       calendar years 2001 and 2002, \$.0136125 per unit sold; for each of  
91       calendar years 2003 through 2006, \$.0167539 per unit sold; for calendar  
92       year 2007 and for each calendar year thereafter, \$.0188482 per unit  
93       sold.

94       (b) A tobacco product manufacturer that places funds into escrow  
95       pursuant to subsection (a) of this section shall receive the interest, or  
96       other appreciation on such funds, as earned. Such funds shall be  
97       released from escrow only (1) to pay a judgment or settlement on any  
98       released claim brought against such tobacco product manufacturer by  
99       the state or any releasing party located or residing in the state. Funds  
100       shall be released from escrow under this subdivision in the order in  
101       which the funds were placed into escrow and only to the extent and at  
102       such time as is necessary to make payments required under such  
103       judgment or settlement; (2) to the extent that a tobacco product  
104       manufacturer establishes that the amount it was required to place into  
105       escrow in a particular year was greater than the state's allocable share  
106       of the total payments that such manufacturer would have been  
107       required to make in that year under the Master Settlement Agreement  
108       had it been a participating manufacturer, as such payments are  
109       determined pursuant to section IX(i)(2) of that Master Settlement  
110       Agreement and before any of the adjustments or offsets described in  
111       section IX(i)(3) of that agreement other than the inflation adjustment,  
112       the excess shall be released from escrow and revert back to that  
113       tobacco product manufacturer; or (3) to the extent not released from

114 escrow under subdivision (1) or (2) of this subsection, funds shall be  
115 released from escrow and revert back to such tobacco product  
116 manufacturer twenty-five years after the date on which such funds  
117 were placed into escrow.

118 Sec. 3. (NEW) (a) Each tobacco product manufacturer that elects to  
119 place funds into escrow pursuant to section 2 of this act shall annually  
120 certify to the Attorney General that it is in compliance with said  
121 section 2.

122 (b) The Attorney General may bring a civil action on behalf of the  
123 state against any tobacco product manufacturer that fails to place into  
124 escrow the funds required under section 2 of this act. Any tobacco  
125 product manufacturer that fails in any year to place into escrow the  
126 funds required under section 2 of this act shall (1) be required within  
127 fifteen days to place such funds into escrow as shall bring it into  
128 compliance with section 2 of this act. The court, upon a finding of a  
129 violation of this subsection, may impose a civil penalty in an amount  
130 not to exceed five per cent of the amount improperly withheld from  
131 escrow per day of the violation and in a total amount not to exceed one  
132 hundred per cent of the original amount improperly withheld from  
133 escrow; (2) in the case of a knowing violation, be required within  
134 fifteen days to place such funds into escrow as shall bring it into  
135 compliance with section 2 of this act. The court, upon a finding of a  
136 knowing violation of this subsection, may impose a civil penalty in an  
137 amount not to exceed fifteen per cent of the amount improperly  
138 withheld from escrow per day of the violation and in a total amount  
139 not to exceed three hundred per cent of the original amount  
140 improperly withheld from escrow; and (3) in the case of a second  
141 knowing violation, be prohibited from selling cigarettes to consumers  
142 within the state, whether directly or through a distributor, dealer or  
143 similar intermediary, for a period not to exceed two years.

144 (c) Each failure to make an annual deposit required under section 2  
145 of this act shall constitute a separate violation.

146      Sec. 4. This act shall take effect July 1, 2000.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OLR Amended Bill Analysis**

sSB 528 (as amended by House "A")\*

**AN ACT CONCERNING THE REGULATION OF CERTAIN CIGARETTE MANUFACTURERS.****SUMMARY:**

This bill requires any tobacco products manufacturer that sells cigarettes in Connecticut to either (1) enter into, and perform financial obligations under, the master settlement agreement between Connecticut and four leading tobacco products manufacturers concluded on November 23, 1998 or (2) pay certain amounts into a qualified escrow fund.

A manufacturer that chooses the latter option must establish an escrow fund and, by April 15 of any year in which it sells cigarettes in the state, pay into it an amount for each such cigarette sold. The amount starts at just over one cent per cigarette for the second half of 2000 and rises to 1.9 cents per cigarette for 2007 and each year thereafter. The amounts must be adjusted for inflation.

Escrowed funds must be used to pay judgments or settlements on released claims brought against the manufacturer by the state or any other party to the master settlement agreement located or living here. Tobacco manufacturers receive any interest or other appreciation on money in the fund as it is earned. Any unused funds must be released to the manufacturer 25 years after they are deposited.

The bill requires manufacturers to certify their compliance with the escrow requirements to the attorney general annually and requires any manufacturer who fails to place funds in escrow by April 15 annually to do so within 15 days.

The bill allows the attorney general to sue violators on the state's behalf. If the court finds a violation, the bill allows it to impose a civil penalty of up to 5% of the amount improperly withheld for each day of violation up to 100% of the improperly withheld amount. For a



knowing violation, the penalty may be up to 15% of the improperly withheld amount per day up to 300% of that amount. For a second knowing violation, a violator is barred from selling cigarettes in the state, either directly or indirectly, for up to two years. Each failure to make the required annual deposit is a separate violation.

\*House Amendment "A" (1) clarifies the exemption for manufacturers that (a) sell cigarettes exclusively through importers that, under the Master Settlement Agreement, are responsible for payments for those cigarettes and (b) do not advertise or market cigarettes in this country; (2) requires covered manufacturers to make escrow payments by April 15 of any year in which they sell cigarettes in the state, not in the following year; and (3) makes technical changes.

EFFECTIVE DATE: July 1, 2000

### **COVERED TOBACCO PRODUCT MANUFACTURERS**

The bill covers any entity or successor that, after July 1, 2000, directly and not through an affiliate, (1) manufactures cigarettes intended for sale in the United States (regardless of where they are manufactured) or (2) is the first purchaser anywhere of cigarettes for resale in the United States, even if their manufacturer did not intend them for sale in the United States.

The bill does not apply to:

1. a manufacturer that intends to sell cigarettes in the United States exclusively through an importer that is responsible for payments for those cigarettes under the master settlement agreement, as long the manufacturer does not market or advertise the cigarettes in the United States; and
2. affiliates of tobacco manufacturers that do not meet the criteria for a covered manufacturer.

Under the bill, an affiliate is an entity that directly or indirectly owns or controls the manufacturer, is controlled by it, or together with it is under the common control of a third entity.

### **PER-UNIT ESCROW CONTRIBUTION**

The bill requires covered manufacturers to pay the following amounts, adjusted for inflation, per-unit sold into their qualified escrow accounts.

Calendar Year	Per-Unit Payment
2000 after 7/1/00	\$.0104712
2001 and 2002	\$.0136125
2003-2006	\$.0167539
2007 and after	\$.0188482

The per-unit contribution applies to each cigarette sold in Connecticut by a covered manufacturer during the year in question. It applies to direct sales and sales through distributors, dealers, or similar intermediaries. The units must be measured by Connecticut excise taxes collected on stamped packs or “roll your own” tobacco containers. Under the bill, each .09 ounces of roll-your-own tobacco counts as one cigarette.

The bill requires the Department of Revenue Services to adopt regulations to implement this provision.

### **ESCROW FUND**

In order to qualify under the bill, the escrow arrangement must be with a state or federally chartered financial institution that is not affiliated with the tobacco manufacturer. The institution must have at least \$1 billion in assets. The escrow arrangement must allow the institution to hold the funds for the principal benefit of parties to a settlement and must prohibit the manufacturer from using, accessing, or directing them.

If a manufacturer shows that the amount it had to place in escrow in any year was more than the state’s share of the total payment the manufacturer would have had to make for that year under the master settlement agreement, the excess must be released from escrow and returned to the manufacturer.

The bill requires funds to be released from escrow in the order they were placed there.

### **BACKGROUND**

***Model Statute***

This bill is the “model statute” required under the tobacco master settlement agreement. States that do not pass the model statute have their allotments from the settlement reduced by up to 65%.

***Legislative History***

On April 21, the House referred the original bill (File 484) to the Judiciary Committee. The committee reported it favorably without change on April 26.

**COMMITTEE ACTION**

Finance, Revenue and Bonding Committee

Joint Favorable Substitute

Yea 47      Nay 0

Judiciary Committee

Joint Favorable Report

Yea 31      Nay 0